

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-1789 (BRL) SIPA Liquidation
In re: BERNARD L. MADOFF, Debtor.	Chapter 7 No. 09-11893 (BRL)

**OPPOSITION OF SCHWARTZMAN METALS, INC. 401(k) FBO
IVAN SCHWARTZMAN TO TRUSTEE'S DETERMINATION OF CLAIM**

Schwartzman Metals, Inc. 401(k) FBO Ivan Schwartzman ("Schwartzman") filed a timely claim with Irving H. Pickard, Trustee under the Securities Investor Protection Act for the liquidation of the business of Bernard L. Madoff Investment Securities, LLC ("Trustee"), which claim is identified by Trustee as 000497 (the "Claim"). The Claim was denied by the Trustee on February 19, 2010. Schwartzman hereby files this its timely written opposition to the Trustee's determination.

The Trustee in his determination said that "the amount of money you withdrew from your account at BLMIS (total of \$990,000) ... is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$0.00)." This determination is factually untrue. In fact approximately \$1,500,000 was deposited with BLMIS for the purchase of securities in approximately 1989, as will be shown at hearing.

The Profit Sharing Plan from which the funds invested with BLMIS was established in the 1970's under the corporate name of Max Schwartzman and Sons, Inc. A few years later the Profit Sharing Plan and corporate name were changed to Schwartzman Co., Inc. The funds were originally invested with the Trust Department of the Northwestern National Bank. Because of poor returns the funds were placed with Kidder Peabody Investments, and then with BLMS in approximately 1989.

Schwartzman is in the process of obtaining records showing the exact amount of the transfer of assets to BLMIS. This effort has been delayed by the difficulties of locating records from firms managing the securities previously to BLMIS. However Trustee, on information and belief, has information showing the \$1,500,000 deposited with BLMIS in its account number 1S042730 which in turn was transferred to the account from which disbursements were made to Schwartzman.

While the account from which disbursements were made was opened in September of 2002, those funds were transferred from an IRA retirement account held by BLMIS opened in the 1990's and funded initially with the cash deposit referenced above of \$1,500,000. When the account was changed from an IRA to a 401(k), BLMIS assigned a new account number, making an in-house transfer from the old IRA account number to the new 401(k) account number for its own convenience.

No cash withdrawals were ever made from the IRA account, and the cash deposited in the old IRA account must be considered cash deposited in the current account for purposes of the Trustee's determination.

WHEREFORE, Schwartzman requests that the Claim be approved in the amount of \$510,000 in principal, that the Trustee's determination be reversed, and that it have all other relief to which it is entitled.

Respectfully submitted,
Ivan Schwartzman

/s/ James B. Koch
James B. Koch,
Attorney for Schwartzman

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